

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

DIOMED, INC.,

Plaintiff,

v.

VASCULAR SOLUTIONS, INC.,

Defendant.

Civil Action No. 104-CV-10444-RGS

**LOCAL RULE 16.1 JOINT STATEMENT**

Pursuant to Local Rule 16.1(B), counsel for the parties have conferred regarding an agenda of matters to be discussed at the upcoming Rule 16 conference, a proposed pretrial schedule for the case that includes a plan for discovery, and consideration of mediation and consent to trial by a magistrate judge.

Counsel have prepared this Joint Statement pursuant to Local Rule 16.1.

**I. DISCOVERY**

The parties shall make their Fed. R. Civ. P. 26(a)(1) initial disclosures by July 1, 2004.

All discovery (including document production, interrogatories, requests for admission, depositions and expert reports) shall be completed by March 15, 2005.

The parties shall each be permitted to serve fifty (50) interrogatories on each party. Document requests and requests for admission shall not be limited. Each party shall be permitted a total of fifteen (15) depositions, including expert depositions, unless otherwise agreed upon by the parties and/or authorized by the Court.

**II. EXPERT DISCOVERY AND CLAIM CONSTRUCTION**

- Plaintiff will identify to Defendant the claims that its asserts to be infringed no later than July 1, 2004.

- The parties will exchange their interpretations of the claims in dispute on September 1, 2004, and will agree by September 15, 2004 on the limitations in dispute.
- Each party will file no later than October 1, 2004 a memorandum in support of its claim construction.
- Oppositions to the claim construction memoranda may be filed within twenty-one (21) days after the filing of the corresponding main memorandum.
- Each party shall designate its expert witnesses, and provide expert reports with regard to issues on which it bears the burden of proof, by January 15, 2005 or within one month of the Court's ruling on claim construction, whichever is later.
- Each party shall provide rebuttal expert reports within one month of service of the other party's corresponding report.

### **III. SUMMARY JUDGMENT**

Summary judgment motions shall be filed within thirty (30) days of the close of discovery or the Court's ruling on claim construction, whichever is later.

Oppositions to summary judgment motions shall be filed within twenty-one (21) days after summary judgment motions have been filed.

Reply briefs in support of summary judgment motions shall be filed within fourteen (14) days after oppositions to summary judgment have been filed.

### **IV. JOINDER OF PARTIES AND AMENDMENT OF PLEADINGS**

The parties shall be allowed until July 1, 2004 to file motions to join additional parties. Notwithstanding the foregoing, if the Court denies the May 17, 2004 motion by Endolaser Associates, LLC ("Endolaser") to dismiss AngioDynamics' counterclaims in Diomed, Inc. v. AngioDynamics, Inc., Civil Action No. 1:04-CV-10019 (RGS), a motion to add Endolaser as a party in the present case may be filed no later than ten (10) days following such denial.

The parties shall be allowed until October 15, 2004 to amend the pleadings.

### **V. CONFIDENTIAL INFORMATION**

Counsel will submit a Protective Order pursuant to Fed. R. Civ. P. 26(c)(7) to the Court for approval prior to the exchange of any confidential documents.

**VI. TRIAL BY MAGISTRATE JUDGE**

The parties are not prepared to consent to trial by a magistrate judge.

**VII. LOCAL RULE 16.1(D)(3) CERTIFICATIONS**

The certifications required by Local Rule 16.1(D)(3) will be filed at or prior to the Scheduling Conference.

**VIII. SCHEDULE MODIFICATIONS**

All dates and other terms set forth herein may be modified by the Court in its discretion, or by written agreement between the parties as approved by the Court, or upon motion to the Court for good cause shown.

Respectfully submitted,

/s/ Michael A. Albert  
Michael A. Albert (BBO #558566)  
[malbert@wolfgreenfield.com](mailto:malbert@wolfgreenfield.com)  
James J. Foster (BBO #553285)  
[jfoster@wolfgreenfield.com](mailto:jfoster@wolfgreenfield.com)  
Michael N. Rader (BBO #646990)  
[mrader@wolfgreenfield.com](mailto:mrader@wolfgreenfield.com)  
WOLF, GREENFIELD & SACKS, P.C.  
600 Atlantic Avenue  
Boston, MA 02210  
(617) 720-3500

COUNSEL FOR DIOMED, INC.

Dated: June 3, 2004

/s/ John R. Bauer  
Steven L. Feldman (BBO #162290)  
[slf@riw.com](mailto:slf@riw.com)  
John R. Bauer (BBO #630742)  
[jrb@riw.com](mailto:jrb@riw.com)  
RUBERTO, ISRAEL & WEINER, P.C.  
100 North Washington St.  
Boston, MA 02114  
(617) 742-4200  
  
J. Thomas Vitt  
[vitt.thomas@dorsey.com](mailto:vitt.thomas@dorsey.com)  
Todd Trumpold  
[trumpold.todd@dorsey.com](mailto:trumpold.todd@dorsey.com)  
DORSEY & WHITNEY LLP  
Suite 1500  
50 South Sixth Street  
Minneapolis, MN 55402  
(612) 340-5675

COUNSEL FOR VASCULAR  
SOLUTIONS, INC.